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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement submitted by Food First Information and Action Network, a non-governmental organization in consultative status (roster)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV)

[16 July 1991]

Indicators and the realization of economic, social and cultural human rights

1. Based on its work for the human right to food, the FIAN International Secretariat makes the following suggestions and observations concerning the conceptual questions of indicators on the realization of human rights in general and of economic, social and cultural human rights in particular.

2. It must be kept in mind that the current work on indicators for deprivation can only be a prelude to the urgent task of determining indicators on the state of implementation and realization of a human right, which must include as a central issue the questions of States' obligations and respective violations.

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3. We consider the state of implementation of a human right to be the degree to which States implement their obligations relative to that human right to prevent or address redressable deprivation related to the norm of the respective human right.

4. The implementation can be supported by the introduction of agreed procedures accessible to every individual to get the State moving on its obligations. Elements of such procedures can be reports, hearings, complaints, and at best legal procedures.

5. Under the Covenant on Economic, Social and Cultural Rights the States parties have the general obligation to take steps with a view to "achieving progressively the full realization of the rights recognized". We believe that the full realization of a human right is reached once old redressable deprivations have disappeared and any new such deprivations relative to the respective norm can be prevented or remedied effectively by a legal procedure.

6. The following could be the role of indicators in the process of progressing towards the full realization of a human right or in maintaining the full realization of a right:

1. A State implements a human right if it implements the specific obligatory measures in a given situation. Otherwise, it violates the respective human right. There is a need for standards and instruments to determine whether or not or to what extent human rights-related obligations are executed.

2. Most indicators proposed concerning the realization of rights are merely indicators of the level of deprivation or indicators of the level of satisfaction of needs.

3. The level of deprivation is an indicator of the lack of implementation of a right if and only if this deprivation can be immediately redressed by a Government. In many cases, however, a closer look at the nature of obligations is necessary.

4. Indicators for violations and States' performance in the field of human rights depend in general on the profile of obligations related to the right and on the policy options available.

7. For purposes of clarification we offer two comments on the notions of "redressable deprivation" and "States' obligations".

8. Redressable deprivation related to the norm of a human right. People need to be protected from being arbitrarily arrested. People need to be protected from hunger. People need to organize freely, people need food, work and education, etc. Human rights contain a claim on a norm, i.e. a standard level of satisfaction of the need. Norms are sometimes narrowly standardized but sometimes they are vague and in need of further specification. In the latter case we take it for granted that at least a "minimum threshold" is an acceptable standard for the norm. Deprivation is

the difference between the norm and the actual level of satisfaction of a need. A deprivation that can be abolished by States' action is redressable.

9. For the different human rights it must be clear what a deprivation is. What is an arbitrary arrest? When is a person malnourished? Indicators can sometimes be used for (a) setting standard levels and for defining deprivation; (b) for indicating the individual extent; or (c) the statistical incidence of deprivation. The change in time of these indicators on deprivation can be an analytical tool for evaluating certain government actions.

10. On the other hand, for a malnourished person, for example, and even for policy-makers the question of the details of defining and measuring deprivation in terms of indicators and the respective extent of malnutrition (i.e., whether there are only 21 per cent malnourished or 28 per cent) are of limited use. What is important for the policy-maker to know is which policy options are available to address deprivation and what are his Government's obligations. For the malnourished (and hopefully others as well) the main question is how to move the Government to act on its obligations. The indicators on deprivation should therefore be seen in their proper (important but limited) perspective for the implementation of human rights.

11. States' obligations. States are obliged to act on redressable deprivation. The specification of obligations of States is one of the most important tasks at hand in the field of human rights. It is important to recall the three types of obligations, i.e. obligations R (to respect), P (to protect) and F (to fulfil). Type R addresses deprivations caused by recent or imminent State actions, P addresses redressable deprivation caused by recent or imminent action of third parties, F Concerns all other redressable deprivations (e.g. those having historical or natural causes). Most human rights have a particular profile of obligations of the different types. In civil and political rights type R is often dominant, with types P and F still important in some rights. In economic, social and cultural rights obligations R and P are important but are sometimes overlooked in favour of type F. A Government fails to implement a human right if it fails to execute a related obligation. If this obligation is type R it can be said that the right is violated, if it is type P we can say the right is negated, for type F we say the right is denied.

12. Obligations R can be immediately carried out, since if the State can deprive, it can also stop depriving. Hence for this particular type of deprivation/obligation the indicator on deprivation is also an indicator for the human rights violation involved. Thus, the incidence of arbitrary arrest, the number of political prisoners or of peasants evicted by a government project without adequate rehabilitation can be taken as an indicator for the extent of the respective human rights violation. For obligations P this identification of indicators for deprivation and violation is a bit more difficult: normally we would assume that the States have the means to protect their citizens against third parties. Finally, type F is a rather complicated type. An analysis has to be made of the measures or policy options available. The maximal percentage reduction of deprivation possible through options available could be called the "indicator of

redressability" in this situation. The percentage reduction due to the option taken divided by the "indicator of redressability" could provide an indicator of the level of fulfilment of the respective obligation. The calculations necessary to obtain this indicator depend not only on the indicators of deprivation but on a lot of political and economic theory and on the specific situation in the State. It goes without saying that instead of scrutinizing every government decision there is a need to specify decisions for monitoring (e.g. certain key issues).